



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 20, 2009

Ms. Jennifer C. Cohen
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2009-16568

Dear Ms. Cohen:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 362585 (DPS #09-1799).

The Texas Department of Public Safety (the "department") received a request for any complaint listing the requestor as a suspect in the last five years, any surveillance records related to the requestor, and any correspondence with the Southern Poverty Law Center, Anti-Defamation League, or Federal Bureau of Investigation mentioning the requestor. You state that you have released some of the requested information. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Part 23 of title 28 of the Code of Federal Regulations was established to regulate intelligence databases pertaining to certain criminal activities, such as drug trafficking and extortion, that involve a large number of participants over a broad geographical area. *See* 28 C.F.R. § 23.2 (background of part 23). The policy standards of part 23 are applicable to all criminal intelligence systems operating through support under

the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3711 et seq. *Id.* § 23.3(a). For purposes of part 23, a criminal intelligence system “means the arrangements, equipment, facilities, and procedures used for the receipt, storage, interagency exchange or dissemination, and analysis of criminal intelligence information,” and an intelligence project “means the organizational unit which operates an intelligence system on behalf of and for the benefit of a single agency or the organization which operates an interjurisdictional intelligence system on behalf of a group of participating agencies.” *Id.* § 23.3(b)(1), (5).

The release of information within these criminal intelligence databases is governed by section 23.20 of part 23, which provides in relevant part the following:

(e) A project or authorized recipient shall disseminate criminal intelligence information only where there is a need to know and a right to know the information in the performance of a law enforcement activity.

(f)(1) Except as noted in paragraph (f)(2) of this section, a project shall disseminate criminal intelligence information only to law enforcement authorities who shall agree to follow procedures regarding information receipt, maintenance, security, and dissemination which are consistent with these principles.

(2) Paragraph (f)(1) of this section shall not limit the dissemination of an assessment of criminal intelligence information to a government official or to any other individual, when necessary, to avoid imminent danger to life or property.

Id. § 23.20(e), (f). You state that the submitted information was generated and is maintained by the department’s Criminal Intelligence Service as part of a criminal intelligence system operated pursuant to part 23 of title 28 of the Code of Federal Regulations. Thus, we conclude that the submitted information is confidential under section 23.20, and may be released only in accordance with that section. You state that the requestor does not appear to be a member of a law enforcement authority. *See id.* § 23.20(f)(1). In addition, the requestor does not have a right to know the information at issue for purposes of section 23.20(e), and you state you have no indication that the release of the information is necessary to avoid imminent danger to life or property. *Id.* § 23.20(f)(2). Therefore, we conclude that the submitted information is confidential under section 23.20 of title 28 of the Code of Federal Regulations, and must be withheld under section 552.101 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and

responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 362585

Enc. Submitted documents

c: Requestor
(w/o enclosures)